

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LARRY MOORE, as an individual and) Case No. 09-1841 SC
on behalf of all others similarly)
situated,) ORDER RE: DEFENDANT'S
) MOTION TO TRANSFER
Plaintiff,)
)
v.)
)
C.R. ENGLAND, INC., a corporation;)
and DOES 1 through 50, inclusive,)
)
Defendants.)
)

I. INTRODUCTION

This suit is a purported class action on behalf of California employees who recently worked as truck driver trainees for Defendant C.R. England, Inc. ("Defendant"). See First Am. Compl. ("FAC"), Docket No. 34. Defendant seeks to transfer this action to the District of Utah, or in the alternative, to the Central District of California ("Central District"). See Second Mot. to Transfer ("Motion"), Docket No. 36. Plaintiff Larry Moore ("Plaintiff" or "Moore") has filed a limited Opposition to the Motion, Docket No. 40, and Defendant has filed a Reply, Docket No. 41. Having considered the submissions of both parties, the Court finds that this matter is appropriate for decision without oral arguments. For the reasons stated below, the Court hereby DENIES

1 Defendant's request to transfer this suit to Utah, but GRANTS
2 Defendant's alternative request to transfer to the Central District
3 of California.

4

5 **II. BACKGROUND**

6 Defendant is in the business of transporting temperature-
7 sensitive freight, such as produce and chemicals, throughout the
8 United States. Nelson Hayes Decl. ¶ 3.¹ In early-to-mid 2008,
9 Plaintiff worked as an employee for Defendant, where he served as a
10 trainee truck driver. Compl. ¶ 8. Defendant is headquartered and
11 incorporated in the state of Utah, and does business in the state
12 of California. Id. ¶ 9; Notice of Removal, ¶ 3. Plaintiff resides
13 in Hesperia, California. Moore Decl. ¶ 2; Opp'n at 11.

14 Plaintiff claims that while he was a trainee for Defendant, he
15 was not reimbursed for his work-related expenses and costs, was
16 denied meal breaks, was not provided accurate wage statements, and
17 was subject to various other violations of the California Labor
18 Code and Business and Professions Code. Compl. ¶ 8. He filed this
19 suit in the Superior Court for Alameda County, and Defendant
20 removed it to the Northern District of California ("Northern
21 District"). See Notice of Removal.

22

23 **III. LEGAL STANDARD**

24 "For the convenience of parties and witnesses, in the
25 interest of justice, a district court may transfer any civil matter
26 to any other district or division where it might have been

27 ¹ Nelson Hayes ("Hayes"), general counsel for Defendant, filed a
28 declaration in support of the Motion to Dismiss. Docket No. 36 Ex.
A.

1 brought." 28 U.S.C. § 1404(a). The purpose of § 1404(a) is to
2 "prevent the waste of time, energy, and money and to protect
3 litigants, witnesses and the public against unnecessary
4 inconvenience and expense." Van Dusen v. Barrack, 376 U.S. 612,
5 616 (1964) (internal quotation marks omitted). "A motion for
6 transfer lies within the broad discretion of the district court,
7 and must be determined on an individualized basis." Foster v.
8 Nationwide Mut. Ins. Co., No. 07-4928, 2007 WL 4410408, at *1 (N.D.
9 Cal. Dec. 14, 2007) (citing Jones v. GNC Franchising, Inc., 211
10 F.3d 495, 498 (9th Cir. 2000)).

11 To support a motion for transfer, the moving party must
12 establish that venue is proper in the transferor district, the
13 transferee district is one where the action might have been
14 brought, and the transfer will serve the convenience of the parties
15 and witnesses and will promote the interests of justice. Foster,
16 2007 WL 4410408 at *2. In determining this issue, courts look to
17 the following factors: (1) plaintiff's choice of forum; (2)
18 convenience of the parties and witnesses; (3) ease of access to the
19 evidence; (4) familiarity of each forum with the applicable law;
20 (5) feasibility of consolidation with other claims; (6) any local
21 interest in the controversy; and (7) the relative court congestion
22 and time to trial in each forum. See id.

23

24 **IV. DISCUSSION**

25 This Motion to Transfer comes before the Court in a unique
26 context. Defendant seeks, first and foremost, to transfer this
27 suit to the District of Utah, where it is headquartered. Defendant
28 requests, in the alternative, that the Court transfer the suit to

1 the Central District of California. Although Plaintiff opposes the
2 request to transfer this suit to Utah, Plaintiff does not oppose
3 the request to transfer to the Central District of California, and
4 in fact argues in favor of transfer to the Central District in
5 certain portions of his Opposition. Opp'n at 2, 18-19. In short,
6 both parties are amenable to transfer to the Central District of
7 California, though transfer to Utah remains contested.

8 The Court notes that this action could have been brought in
9 either the District of Utah or the Central District of California.
10 Venue would be appropriate in either district because Defendant is
11 headquartered out of Salt Lake City, Utah, and operates within
12 California. Hayes Decl. ¶¶ 3, 5. It has two offices in Mira Loma,
13 California, and another office in Ventura, California -- all of
14 which are located in the Central District of California. Id. at 5.
15 These same facts are also sufficient to establish personal
16 jurisdiction over Defendant in either District.

17 **A. Plaintiff's Choice of Forum**

18 In general, a plaintiff's choice of forum carries substantial
19 weight in a motion to transfer venue. See, e.g., Foster, 2007 WL
20 4410408 at *2; Flint v. UGS Corp., No. 07-4640, 2007 WL 4365481, at
21 *3 (N.D. Cal. Dec. 12, 2007). However, there are a number of
22 factors that can detract from the weight of this consideration.
23 First, a plaintiff's choice of forum is often accorded less weight
24 in the class-action context. See Lou v. Belzberg, 834 F.2d 730,
25 739 (9th Cir. 1987). Second, "the degree to which courts defer to
26 the plaintiff's chosen venue is substantially reduced when the
27 plaintiff's choice is not its residence or where the forum lacks a
28 significant connection to the activities alleged in the complaint."

1 Inherent.com v. Martindale-Hubbel, 420 F. Supp. 2d 1093, 1100 (N.D.
2 Cal. 2006) (quoting Carolina Cas. Co. v. Data Broad. Corp., 158 F.
3 Supp. 2d 1044, 1048 (N.D. Cal. 2001)). "If the operative facts
4 have not occurred within the forum of original selection and that
5 forum has no particular interest in the parties or the subject
6 matter, the plaintiff's choice is entitled only to minimal
7 consideration." See Pacific Car and Foundry Co. v. Pence, 403 F.2d
8 949, 954 (9th Cir. 1968).

9 This factor weighs little, if at all, against transfer to the
10 Central District of California. Plaintiff has expressed
11 ambivalence as between the Central and Northern District. In
12 addition, Plaintiff resides in the Central District of California,
13 Opp'n at 11, has offered no explanation for his decision to file in
14 the Northern District, and has identified no factual connection
15 between the Northern District and this litigation as it pertains to
16 his own cause of action. This significantly undercuts his interest
17 in retaining jurisdiction in the Northern District -- at least as
18 compared with the Central District.

19 Notwithstanding the balance of this consideration as between
20 the Northern and Central Districts, the Court concludes that this
21 factor still weighs against transfer to the District of Utah. The
22 Court sees no reason to read Plaintiff's choice of forum narrowly,
23 at least while comparing the chosen forum to a more distant and
24 less connected forum. Although Plaintiff has failed to explain his
25 decision to file in the Northern District of California, as opposed
26 to Central District, the reasons for his choice of a California
27 forum are obvious: Plaintiff seeks to represent a class of
28 California employees for violations of California statutes. The

1 Court considers this to be a significant factor against transfer to
2 Utah.

3 **B. Convenience of Parties and Witnesses**

4 The convenience of witnesses is often the most important
5 factor in resolving a motion to transfer. Bunker v. Union Pac.
6 R.R. Co., No. 05-4059, 2006 WL 193856, at *2 (N.D. Cal. Jan. 23,
7 2006). "In analyzing whether transfer of a case would serve the
8 convenience of the witnesses, the Court must look at who the
9 witnesses are, the nature of what the testimony will be, and why
10 such testimony is relevant or necessary." Flint, 2007 WL 4365481
11 at *4.

12 Both parties suggest that this factor favors the Central
13 District of California over the Northern District. Defendant has
14 three offices in the Central District. Hayes Decl. ¶ 5. Defendant
15 claims that one of the two experienced truck drivers who were
16 paired with Plaintiff when he was a trainee resides in Crestline,
17 California, which is located in the Central District.² Id. ¶ 12.
18 Plaintiff was trained for weeks in the Mira Loma facility, where
19 Defendant "has a major location including a truck yard and a truck
20 driving school," and where Plaintiff was "trained on the policies
21 and practices of Defendant" Moore Decl. ¶¶ 3, 4; see also
22 Hayes Decl. ¶ 10. Because Plaintiff seeks to represent only
23 California trainees, many factual witnesses for the class, as well
24 as the class members themselves, are likely to reside in or around
25 the Central District. See Moore Decl. ¶¶ 4-5 (claiming that
26 Plaintiff participated with approximately fifty other trainees, who

27

² The other truck driver is said to reside in Sheridan, Wyoming,
28 Hayes Decl. ¶ 5, and would therefore not likely find it convenient
to participate in litigation in any suggested location.

1 rotated through the program at Mira Loma on a monthly or bi-monthly
2 basis).

3 Defendant contends that this factor favors transfer to Utah
4 even more strongly than it favors transfer to the Central District.
5 Trainee drivers apparently communicate frequently with Defendant's
6 offices in Utah, "so that England can process drivers' compensation
7 and comply with federally-mandated record retention requirements,"
8 presumably from within Utah. Hayes Decl. ¶ 15. Defendant points
9 out that Plaintiff's training coordinator, as well as the company's
10 driver managers, are located in Salt Lake City, Utah -- along with
11 "[v]irtually all" of Defendant's operational and managerial
12 personnel, and "virtually all" of the documents related to this
13 litigation. Id. ¶¶ 11, 18. Although Defendant does not specify
14 precisely what kind of testimony these individuals are likely to
15 provide, the Court finds it credible that Utah will be convenient
16 for many employee witnesses who can verify Defendant's payment
17 practices, and overtime and break policies.

18 Neither party has explained why litigation in the Northern
19 District would be convenient for anybody involved in this
20 litigation. Consequently, this factor favors transfer. Because
21 Defendant claims that its payroll and personnel policies were
22 centered out of Salt Lake City, id. ¶ 16, Utah would likely be a
23 very convenient forum for Defendant, and would not be terribly
24 inconvenient for Plaintiff. However, because Plaintiff and other
25 potential class members are likely to have had a great deal of
26 interaction with Defendant through its California offices, and
27 because parties have not clearly explained exactly what role these
28 offices played in terms of compliance with the relevant California

1 statutes, there is no reason to conclude that the Central District
2 would be an inconvenient forum. Indeed, it would likely be more
3 convenient for the Plaintiff. This factor therefore favors
4 transfer to the district of Utah, but only slightly more than it
5 favors transfer to the Central District of California.

6 **C. Ease of Access to Evidence**

7 No party suggests that any relevant documents are stored in
8 the Northern District of California. Plaintiff speculates that
9 relevant documents may be stored in Defendant's offices in the
10 Central District, Opp'n at 8; Kenneth Yoon Decl. ¶ 4,³ however
11 Defendant claims that nearly all of the documents are in fact
12 stored in Utah, as Defendant actually considered Utah to be
13 Plaintiff's "place of employment," Hayes Decl. ¶ 20; Reply at 9
14 n.2. Assuming that the relevant documentation is indeed in Utah,
15 this factor favors transfer to Utah over transfer to the Central
16 District. However, as Plaintiff points out, the current physical
17 location of the evidence is a very minor factor when considering a
18 motion to transfer. See Van Slyke v. Capital One Bank, 503 F.
19 Supp. 2d 1353, 1362 (N.D. Cal. 2007) ("With technological advances
20 in document storage and retrieval, transporting documents does not
21 generally create a burden."). As the district court in Van Slyke
22 wrote:

23 Other than describing where their records are
24 located, defendants do not contend that
25 transporting records, or reducing them to
26 electronic form, would cause them significant
27 hardship. [Transfer] may reduce discovery costs
28 somewhat, at least for defendants. This factor,
however, is of diminished importance and, is
neutral toward transfer.

³ Kenneth Yoon ("Yoon"), attorney for Plaintiff, filed a declaration in opposition to the Motion. Opp'n Ex. A.

1 Id. at 1362-63.

2 **D. Familiarity with Each Forum with Applicable Law**

3 "There is an appropriateness in having the trial of a
4 diversity case in a forum that is at home with the state law that
5 must govern the case, rather than having a court in some other
6 forum untangle problems in conflict of laws, and in law foreign to
7 itself." Van Dusen, 376 U.S. at 645 (citation and ellipses
8 omitted). This factor is clearly neutral as between retention in
9 the Northern District and transfer to the Central District. Either
10 district would be equally familiar with the relevant California
11 statutes. This factor also clearly disfavors transfer to Utah,
12 which is likely to be less familiar with California law than either
13 a court in the Northern or Central Districts of California.
14 Nevertheless, "other federal courts are fully capable of applying
15 California law." Foster, 2007 WL 4410408 at *6. Consequently,
16 this factor weighs only slightly against transfer to Utah.

17 **E. Feasibility of Consolidation**

18 The feasibility of consolidation is a significant factor in a
19 transfer decision, and even the pendency of an action in another
20 district is important because of the positive effects it might have
21 in possible consolidation of discovery and convenience to witnesses
22 and parties." A.J. Indus., Inc. v. U.S. Dist. Court for Cent.
23 Dist. of Cal., 503 F.2d 384, 389 (9th Cir. 1974). Both parties
24 have pointed out that Defendant is party to a similar putative
25 class action that is ongoing in the Central District of California,
26 involving similar allegations that Defendant has violated many of
27 the same California labor provisions. Jasper v. C.R. England,
28 Inc., No. 08-CV-05266 (C.D. Cal. filed Aug. 11, 2008). The Court

notes that the Jasper suit has not progressed significantly further than this suit. The plaintiff in Jasper is seeking to certify a class of "[a]ll persons employed by CR England in California as drivers from July 1, 2004, to present." See id. (Mar. 30, 2009) (order denying motion for class certification without prejudice). Depending on how Defendant classifies its "drivers" and its "trainees," there may be overlap between the class sought by the plaintiff in Jasper and the class that Plaintiff in this suit will eventually seek to certify. This factor weighs heavily in favor of transfer to the Central District of California.

F. Local Interest in the Controversy

In resolving motions to transfer, district courts may consider "the local interest in having localized controversies decided at home [and] the the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action." Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986). This factor is neutral as between retention within the Northern District and transfer to the Central District. However, perhaps more than any other factor, this consideration clearly disfavors adjudication within Utah. The class that Plaintiff seeks to certify is a class of only California employees who were truck driver trainees, and the Complaint names only causes of action that arise from California state law. California has a significant interest in enforcing its wage and labor laws, and in promoting the use of California's class action device. See Sav-On Drug Stores, Inc. v. Sup. Court, 34 Cal. 4th 319, 340 (2004). California has an interest in providing its citizens with a forum in California in which its Citizens can vindicate their rights

1 under California law.

2 **G. Relative Court Congestion and Time to Trial**

3 Plaintiff concedes that both the Central District and Utah
4 have lower case loads than the Northern District. Opp'n at 20.
5 Nevertheless, the Court agrees that this is, "at best, a minor
6 factor in the section 1404 calculus." Royal Queentex Enter. v.
7 Sara Lee Corp., No. 99-4787, 2000 WL 246599, *8 (N.D. Cal. Mar. 1,
8 2000). The Court concludes that this factor weighs slightly in
9 favor of transfer to Utah.

10 After weighing all of the considerations offered by both
11 parties, this Court concludes that it would be most appropriate to
12 transfer this suit to the Central District of California. It
13 appears that both Utah and the Central Districts are more relevant
14 to the subject of this litigation, and either would provide a more
15 convenient forum. However, the relative benefits of the District
16 of Utah are slight when compared to the potential for consolidation
17 and the interest in resolving this dispute within the state of
18 California, as it involves a putative California class with
19 grievances founded solely upon California law. The Court therefore
20 GRANTS Defendant's alternative request to transfer this suit to the
21 Central District of California.

22

23 **V. CONCLUSION**

24 Defendant's Motion to Transfer is DENIED IN PART and GRANTED
25 IN PART. Defendant's request to transfer this suit to the District
26 of Utah is DENIED. Defendant's alternative request to transfer
27 this suit to the Central District of California, which is
28 unopposed, is GRANTED. Pursuant to Civil Local Rule 3-14, the

1 Clerk shall transmit the file to the Clerk in the United States
2 District Court for the Central District of California. As both
3 parties have relied upon the possibility that this suit may be
4 either consolidated or coordinated with Jasper v. C.R. England,
5 Inc., No. 08-CV-05266 (C.D. Cal. filed Aug. 11, 2008), the parties
6 are directed to file a motion to relate within a reasonable time
7 after this suit has been transferred to the Central District.
8

9 IT IS SO ORDERED.
10

11 Dated: October 23, 2009
12


UNITED STATES DISTRICT JUDGE